

The Reverend Ralph Hawtry, Clerk, Master of Arts, Vicar of the Parish of } Appellant.  
Killcolumb, in the Diocese of Offory, in Ireland, - - - - -

Cassandra Daniel, Widow, John Digby, Esquire, an Infant, by Simon } Respondents.  
Digby, Esquire, his Father and Guardian, Cassandra M'Naghton, an In-  
fant, by the said Cassandra Daniel her Guardian, and Sydnam Snow,  
and Robert Snow, and Richard Lord Bishop of Offory, - - - - -

## The Appellant's CASE.

**H**IS Majesty is seised, in Right of the Crown, of the Advowson of the Church of Killcolumb, in the Diocese of Offory, consisting of a Rectory and Vicarage endowed; and the Church being vacant by the Death of Samuel Henry, the last Incumbent, his Majesty, by Letters Patent dated at Dublin the 7th of June, in the 26th Year of his Reign, presented the Appellant thereto, who was thereupon instituted and inducted, and has ever since been complete and only Incumbent, having the actual Cure of Souls, within the said Parish.

The Rectory of Dungarvon, with the Mansion-house and Glebe Land thereto belonging—The Rectory of Killbride—The Rectory of Killcolumb, and the Rectory of Fidown, were formerly Part of the Possessions of the dissolved Monastery or Abby of St. Catherine's, near Waterford, in Ireland, and, by the Surrender of the Monastery, became the Inheritance of the Crown, and were, from thenceforth, occasionally leased by the Crown to different Proprietors, at several yearly Rents.

King James the First, being seised in Fee of Killcolumb and the other Rectories, by his Letters Patent, dated the 28th of June, 1603, in the First Year of his Reign, in Consideration of the Surrender of a former Lease made by Queen Elizabeth, and of a pecuniary Fine, demised the same to Sir Lawrence Esmond, and Ellis his Wife, and Patrick Sherlock her Son, for a Term of 21 Years, at the yearly Rent of 100 l. 10 s. 6 d. Halfpenny, the Lessee paying all Proxies, Synodals, Stipends of Curates, Pensions, Rents, Services, and all other Charges issuing out of the Premises.

His said Majesty afterwards, by other Letters Patent, dated the 3d of March, in the 17th Year of his Reign, demised the same to Sir Lawrence for a further Term of 51 Years, to commence from the Expiration of the former Lease, which was to expire in 1624.

King James the First afterwards, taking into Consideration the Condition of the Church in Ireland, by his Instructions to the Governors of that Kingdom, commanded, That all such Improper Parsonages as were his Inheritance, and held by Lease from the Crown, should for ever, as such Leases expired, be thenceforth set to the several Curates and Ministers of all such Churches, who were to attend the Cure of Souls, and should be Incumbents on the several Parsonages, they securing to his Majesty the Rents, Duties, and Services reserved upon such Leases.

King Charles the First afterwards confirmed these Instructions or Orders, by his Royal Order of the 8th of July, 1626.

And again afterwards, by a Second Order, reciting the Two preceding Orders, and that, notwithstanding the same, his Majesty was informed that sundry Tythes, upon the Expiration of the former Leases or otherwise, had been again lett to Laymen; his Majesty therefore declared his Intention, for him, his Heirs and Successors, to grant the Reversion of all such Tythes, Obventions, and Profits, (and with such Reservations only as had formerly been expressed), irrevocably to Almighty God, and to the particular Churches to which such Tythes belonged, and to the several Incumbents who should be in the said Churches, when such Leases should determine, and to their Successors for ever—Giving thereby to such Incumbents, on the Expiration of such Leases, full Power to enter into Possession of the said whole Tythes; and charging all Officers of the Exchequer to receive the same; and also requiring Letters Patent under the Great Seal to be made out for granting the said Tythes to the Use of the said Incumbents, and their Successors for ever.

The Second Lease which had been granted to Sir Lawrence Esmond, afterwards Lord Esmond, being to expire in 1675, King Charles the Second, by Letters Patent, dated the 28th of January, in the 22d Year of his Reign, 1670, reciting the last Lease to Sir Lawrence Esmond, granted the several Rectories and Tythes to Sir Ellis Leighton, for a further Term of 51 Years from the Expiration of the former Leases, which was to be in 1675.

This last Lease did not efflux in Point of Time till the Year 1726; till which Time neither the Right of the Appellant or the Respondents could attach.

Sir Ellis Leighton declared a Trust of this last Lease for John Lord Berkeley of Stratton.

King Charles the Second, being still seised in Fee, in Right of his Crown, of the Reversion of the several Rectories and Tythes expectant on the Determination of the Two subsisting Leases to Lord Esmond and Sir Ellis Leighton, on the 7th Nov. 1675 (in Execution of the favourable Intentions of his Royal Predecessors to the Church), made a Reversionary Grant (which was inrolled on the 1st of the ensuing April) of the Inheritance thereof to John Lord Bishop of Offory, and his Successors, in Trust for the future Incumbents of the several Parishes, and under this last Grant the Appellant derives his immediate Title to the Tythes in Question—This Grant is introduced with the following Recitals.

It recites, That King Charles the First, by Letters, dated the 20th April, in the 11th Year of his Reign, signified his Pleasure that all Improvements whereof he was then seised, in Right of his Crown, should be granted to the Clergy, by such Letters Patent as should be fit;

And that King Charles the 2d, by his Letter, dated the 20th of Nov. 1660, signified his Pleasure, that Rectories Appropriate and Vicarages, and the Tythes then in his Possession, by the Expiration of the former Leases, and the Reversion of such whereof the former Leases were not expired, and such as were forfeited by the late Rebellion and not restored, should be granted to the Incumbents and their Successors for ever.

And further recites a Clause in the Act of Settlement, That all Improvements or Appropriate Tythes forfeited to, or vested in, his Majesty, by the said Act, or otherwise forfeited or escheated to his Majesty, in Right of his Crown, should be settled on the Incumbents, having Cure of Souls—And also a Clause in the Explanatory Act relating to the same Matter.

Also his said Majesty's Letter, dated the 4th July, 1673, for removing all Doubts that might arise in the Construction of the said Clauses, declaring his Intention to be, that as well the Reversions of all Improvements and Appropriate Tythes, whereof no such Demise, not forfeited, was then in being, and which belonged to his Majesty, in Right of his Crown, or which, by any Forfeiture, Attainder, or by the said Act, were vested in his Majesty, or which theretofore were acquired or given to the Use of the Church, should be granted by Letters Patent to the Incumbents of the Parishes wherein they arise, or to such Persons as the Lord Lieutenant should appoint, in Trust for such Incumbents.

And that the Lord Lieutenant had appointed such Grant to be made to John Lord Bishop of Offory, and his Successors.

It further recites an Order made by the Lord Lieutenant and Council, dated the 4th July, in the 25th Year of his Majesty's Reign, that the Rent to be reserved on such Grant should be the Rent payable thereout in 1641, and a Fifth Part of the said old Rent as Augmentation Rent.

And then his Majesty grants, pursuant to his Letters, dated the 4th of July, 1673, to the said Bishop and his Successors, *inter alia*, the Farm of the Two Parts of the Tythes of the Rectory of Dungarvon, with the Mansion-house and Glebe—The Farm of the Rectory of Killbride—The Farm of the Rectory of Killcolumb; and the Farm of Two Parts of the Tythes and Alterages of the Rectory of Fidown; which were by the Patent, dated the 3d of March, 1619, demised to Lawrence late Lord Esmond, for 51 Years, from Michaelmas, 1624; and the Reversions and Remainders, and all his Right, Claim, and Estate, and Interest therein, either in Right of his Crown, or by virtue of the said Acts or otherwise, To Hold to the Bishop, and his Successors, to the Intent to permit the several Incumbents, in their respective Parishes, to receive and convert the Profits to their own Use—With a Reservation of several yearly Rents to the Crown, in respect to the several Rectories—And particularly for Killcolumb, the yearly Rent of 16 l. being the old Rent payable in 1641—And 3 l. 4 s. yearly Increase Rent, according to the Order of the said Lord Lieutenant and Council:

With a Proviso, That such of the Premises, whereof any Terms for Years were then subsisting, should pay, during such Terms, the Rents they paid in 1641.

And his Majesty thereby granted to the Bishop, and his Successors, that the said Letters Patent, or the Enrollment thereof, should be, in all respects, firm, good, valid, and effectual, in Law, against him, his Heirs and Successors, notwithstanding the naming or reciting the said Tythes and Premises improperly, and notwithstanding the naming or reciting improperly any Demise or Demises, Grant or Grants, of the Premises, or any Part thereof, and notwithstanding true and full Mention was not made of the Names of the Tenants, Farmers, Occupiers, or former Possessors of the Premises, and notwithstanding the not reciting or reciting improperly his Majesty's Title in and to the Premises, or any Part thereof, and notwithstanding any Statute, Act, Ordinance, or Provision, or any other Thing, Cause, or Matter, whatsoever, which might tend to weaken or annul the same.

The Title set up by the Respondents to the Rectory in Question is deduced under the following Grant and Conveyances; viz.

That the Lease to Sir Ellis Leighton was a Trust only for Lord Berkeley, and so declared by the Deed by him executed in 1673.

June, 1753 — His Majesty's Commission of the Appellant to the Church of Killcolumb.

Killcolumb and Fidown, and other Rectories, became vested in the Crown upon the Dissolution of the Abbey.

1603. Demise by K. James the 1st of the Rectories to Sir Lawrence Esmond and others, for 21 Years.

1619. Further Demise by K. James the 1st of the Rectories to Sir Lawrence Esmond and others, for 51 Years.

1626. Confirmed by K. Charles the 1st.

1670. Further Order by K. Charles the 2d, enforcing the said Instructions.

1675. Further Lease by K. Charles the 2d to Sir Ellis Leighton for 51 Years, from the Expiration of the former Leases.

1673. Grant by King Charles the 2d to the Bishop of Offory, in Trust for the Incumbents of the Parishes.

The last Grant.

The Incumbent in Question became the Crown by the Surrender of the Abbey.

The Patent is described only, in respect to the Parcels; not by Recital, as if it had been a Lease.

The Non-recital of Leighton's Lease, though it might be a Defect upon the Church, could be none upon the Crown.

Respondents Title.



27 June, 1676. Grant by K. Charles the 2d to Edward Prodgers, Note, The Lease to Leighton is here recited to show this Grant was not to take place till the Expiration of that Lease.

who, in August following, conveys to Lord Berkeley.  
From whom the Premises, in 1681, became vested in Henry Daniel.

That King Charles the Second, by Letters Patent, dated 17th June, 1676. (being above a Year after the Date and Enrollment of the preceding Grant to the Bishop of the Diocese, in Trust for the Incumbents), reciting the Lease to Leighton, of which the Trust had been declared to Lord Berkeley—Granted the Reversion of the Rectory in Question, expectant on the Determination of Leighton's Lease, to Edward Prodgers, and his Heirs.

That Prodgers, by Lease and Release, dated 22d August, 1676, in Consideration of 600 l. conveyed the Premises to Lord Berkeley in Fee.

That Lord Berkeley died soon after, leaving John Lord Berkeley, his eldest Son and Heir, and Christian Lady Berkeley his Widow and Executrix, and that Lady Berkeley, by Deed of 30th October, 1681, in Consideration of 1000 l. conveyed her Interest therein to Henry Daniel, Clerk, and his Heirs, with a Covenant that Lord Berkeley her Son, who was then a Minor, should, when of Age, convey the Inheritance to him; and that, in Pursuance thereof, she and her Son, upon his coming of Age, conveyed the same to Henry Daniel accordingly, in Consideration of 1400 l. by Lease and Release, of the 23d and 24th of May, 1695; and that Lord Berkeley the Son, and Jane Lady Berkeley his Wife, in Hilary Term, 1695, levied a Fine of the Premises accordingly to Daniel.

It is alleged by the Respondents, That this Grant was made to Prodgers, in Consideration of his surrendering the Office of House-keeper of the Palace of York, granted to him at the Time of the Rebellion; but it should rather seem, from the prior Trust of Leighton's Lease, and from the immediate Conveyance consequent upon the Grant to Lord Berkeley, that he was a voluntary Nominee for his Lordship; and even if his Lordship really paid him the 600 l. and Henry Daniel afterwards paid his Lordship's Family the 1400 l. for the Grant, yet the Rents payable to the Crown, during the Continuance of Leighton's Lease (including a Period of 50 Years from the Date of Prodgers's Grant) were an ample Recompence for the Purchase Money.

As Lord Berkeley could not be ignorant of Leighton's Lease, of which the Trust was declared to himself in 1673 So neither could he, or Prodgers his Nominee, be Strangers to the prior Reversionary Lease to the Bishop of Offory, which had been inrolled so long before the Grant to Prodgers, and till the Expiration of that Lease the Possession under it was the Possession of the Lessee or his Assignee, and not of the Grantee.

At the Time of the Expiration of Leighton's Lease in 1726, when the Reversionary Grant to the Bishop took Place, Samuel Henry, Clerk, since deceased, was Incumbent of the Church of Killcolumb, and Robert Watts was the Incumbent of the Parish of Fidown.

Upon the Death of Henry Daniel, Richard Daniel his eldest son and Heir, claimed the Benefit of the Grant to Prodgers; and having, upon the Strength of that Title, prevailed upon the Farmers to refuse the Payment of their Tythes to the Incumbents—Robert Watts, the Incumbent of Fidown (both Incumbents claiming under the same Title), in order to bring the Validity of that Grant to a judicial Determination in 1728, brought an Action of Trespals in the Name of Sir John Vesey, then Bishop of Offory, against Henry Briscoe, one of the Farmers, for unjustly carrying away a Cock of Hay, which had been set out for two third Parts of the Tythes of the said Parish of Fidown, as Part of the Rectorial Tythes of the said Parish—But the Cause abated before Trial, by the Bishop's Death.

The Bishop being succeeded in the See by Dr. Edward Tenison, another like Action was commenced in the Name of the new Bishop, which proceeded to Trial; but, upon the Trial, one of the Jurors was suddenly seized with so violent a Disorder, as rendered him incapable of attending to the Evidence, so that the Bishop was under a Necessity of consenting to withdraw a Juror, and afterwards the Cause was appointed to be tried at Bar, and then put off for want of Jurors for some Time, and then came again to be tried, when Richard Daniel, instead of insisting on his pretended Title, took Advantage, that the Bishop was not prepared to prove that he had performed all the Requisites to entitle him to enjoy the See of Offory, whereby his Lordship was under a Necessity of suffering a Nonfuit.

These repeated Disappointments occasioned the bringing a third Action of Trespals in Easter Term, 1733, in the Name of the Bishop, against Henry Briscoe, which at last received a Trial at the Assizes of Kilkenny, where the Jury found a Special Verdict, but, before the Matter of Law arising on the Verdict came on to be argued, the Cause abated by the Deaths of the Bishop and of Briscoe.

Afterwards in Hilary Term, 1737, still one more Action was brought in the King's Bench in Ireland, in the Name of Charles, then Bishop of Offory, against William Kitchin, for carrying away Two Fleeces of Wool, which had been set out for the Rectorial Tythes of the said Parish, when Daniel was served with a Notice, that the said Action was brought with Intent to bring to a legal Trial, his pretended Title to the Rectorial Tythes of the said several Parishes, and to give Evidence as to the Parish of Fidown only, and requiring him to take on himself the Defence of the said Suit, as he had done of the several other Suits against Briscoe, but he declined the same, and permitted Judgment to pass against Kitchin, by Default—And,

Afterwards on the 7th of February, 1737, exhibited a Bill in the Court of Exchequer in Ireland against Robert Watts, alleging, that he had been for many Years in the quiet Possession of the Rectorial Tythes of the said Parish, by virtue of a Title then in being, and undetermined; and, upon filing the Bill, obtained an Injunction against Watts, for want of an Answer; and soon afterwards, on the 30th of April 1738, died, leaving the Respondents, Cassandra Daniel, his Widow, and Three Daughters, Ann, late Viscountess Massareen, since deceased, and Elizabeth and Mary Daniel, Spinsters, his Heirs at Law—By his Will, he devised to the Respondent Cassandra Daniel, his Widow, his pretended Title to the Rectorial Tythes for her Life, with Remainder to his Three Daughters.

After the Death of Richard Daniel, the Respondent Cassandra Daniel, his Widow, exhibited her Bill of Revivor against Watts; who, having fully answered the Bill, and the said Respondent having afterwards applied for an Injunction against him, and failed in her Motion, she proceeded no further in the Cause; but about the same Time made a Lease of the Tythes of the several Parishes, to the Respondent Robert Snow, for her Life, who instituted no less than Twenty-eight different Suits against Twenty-seven of the Inhabitants of the Parish of Fidown, in the Consistory Court of the Diocese of Offory, for Substraction of Tythes—Upon which, in order to procure a legal Determination of the Title,

Robert Watts applied to the Two successive Bishops of Offory (in whom the legal Title of the Rectorial Tythes was vested by the Letters Patent, in Trust for the Incumbents) to permit their Names to be used in Ejectments, or other proper Suit in Law or Equity, in order to recover the Tythes from the Respondents Daniel and her Daughters; which the Bishops refusing, Watts, as Vicar and Incumbent of Fidown, exhibited his Bill in the Court of Chancery in Ireland, against the Respondent Daniel, the said Elizabeth and Mary Daniel, her then surviving Children (Lady Massareen being dead without Issue, and her Title devolved upon her Sisters); and also against the Respondents Robert and Sydnam Snow, and against Michael, Lord Bishop of Offory, and others, praying the Establishment of his Title, and to be quieted in Possession of the Tythes.

To this Bill some of the Defendants demurred, on Pretence that the Title was triable at Law; but the Demurrer was over-ruled, in regard it was charged in the Bill, that the legal Title was in the Bishop who refused to sue.

The Cause came on to be heard, when it was decreed, that a Case should be stated, and sent to the Court of Common Pleas, for their Opinion, "Whether Michael, then Bishop of Offory, in Right of his See, and Watts as deriving under him, by virtue of the several Grants before stated, or the Respondent Cassandra Daniel, and her Daughters, and the Respondents Robert and Sydnam Snow, as deriving under them, were entitled to the Rectorial Tythes of the Parish of Fidown."

The Case was accordingly stated by a Master in Chancery, containing a full Deduction of the different Titles and Claims made by the Parties, agreeable to the present Narrative, and the Case thus stated, being afterwards solemnly argued before the Court of Common Pleas in Ireland—That Court (where Lord Chief Justice Singleton then presided) on the fullest Consideration, certified their Opinion, that Two-thirds of the Tythes of the said Parish of Fidown, the Vicarage being admitted to be endowed with the other Third, were granted to the Bishop of Offory and his Successors, by the Letters Patent, dated the 7th of November, in the 27th Year of King Charles the Second; and that Watts, the then Incumbent of Fidown, having the actual Cure of Souls, was entitled, by virtue of that Patent, to the said Two-thirds of the Tythes of the said Parish.

The Cause coming back to the Court of Chancery upon the Judge's Certificate, Robert Watts was decreed to the Possession of the Two-thirds of the Tythes of Fidown, during his Incumbency, and an Account was directed of the Rents and Profits thereof, from the last Day of Easter Term, 1728 (when the first Action was brought against Briscoe), and also from the Time of filing the Bill, the Court reserving the Consideration from what Period the Defendant should be charged—Upon which last Decretal Order, several Proceedings were afterwards had.

Samuel Henry, the then Incumbent of Killcolumb, and the other Incumbents of the Parishes of Dungarvan, and Killbride (who claimed under the very same common Title or Grant with Watts, and were opposed by the same Pretence of Title on the Part of the Daniels), were not so litigious as to harrahs either their Adversaries, or the Bishops their Trustees, with separate Suits as to each Rectory,—But rather waited the Issue of the Suits prosecuted by Watts, upon the same common Title, viz. the Validity of the Letters Patent of the 27th of King Charles the Second; upon a Presumption, that in case the Title of the Bishop, in Right of his See, to the particular Rectory of Fidown, under the said Letters Patent, should be established, that they, as the Cestuique Trusts of the other Rectories comprised in and claimed on both Sides, under the very same Grants, should be let into Possession of the Rectories and Tythes of the other Parishes, whereof they were respectively Incumbents, without further Litigation or Trouble; and that the several Suits commenced by the successive Bishops and Watts, upon the same Title, would enure to their Benefit, as the Bishops Title to all the said Rectories, was thereby solemnly determined; but no sooner was this Suit finally determined, than they found themselves mistaken, for the Daniels refused to deliver them up, on a Pretence that Watts having by his Bill demanded only the Rectory of Fidown, the Determination in that Cause did not in Words extend to the other Rectories, and the long Pendency of that Contest for 20 Years together, occasioned solely by the Litigation of the Daniels, was then to be worked up into a supposed Acquiescence on the Part of the other Incumbents, who apprehended the Case of all the Rectories comprised in the same Grant, was involved in the same common Determination, though upon one only, and that the Prosecution by Watts, was the Prosecution of all the Incumbents in the same Circumstances.

Samuel Henry, the last Incumbent of Killcolumb, did not live to effectuate any particular Prosecution upon his own Account, and after his Death, the Appellant on the 7th of June 1753, upon the Presentation of the Crown, succeeded to the Rectory, and, as it should seem, to the Litigation entailed upon the Incumbents of the several Rectories.

The Proceedings in Watts's Case, having furnished ample Experience of the Inefficacy of any legal Prosecution for asserting the Right to the Tythes, and the Parishioners (who are 800 in Number) refusing to pay their Tythes to the Appellant, under Pretence of the Title of the Daniels, and the Bishop of Offory, in whom the legal Estate of the Tythes was vested, refusing to aid the Appellant in an Ejectment;

Richard Daniel claims the Grant to Prodgers on the Death of Henry Daniel.

1728. Trespals brought against him by Watts, the Incumbent of Fidown, but abated by the Bishop's Death.

Another Action brought in the Name of the succeeding Bishop.

But the Bishop Nonfuit.

Further Action brought by the said Bishop against Henry Briscoe. Special Verdict.

Cause abated by the Death of the Bishop and Henry Briscoe.

Further Action brought in the Court of King's Bench in the Name of the then Bishop, against William Kitchin.

Not defended by Daniel, and Judgment for the Bishop by Default.

7th Feb. 1737. Bill brought by Daniel in the Court of Exchequer in Ireland against Watts.

30th April, 1738. Death and Will of Richard Daniel.

Bill of Revivor by Cassandra Daniel.

She leases the Tythes to the Respondent Snow. Who brings a Multiplicity of Actions against the Farmers.

Bill by Robert Watts.

Demurrer thereto, but over ruled.

4th May, 1744. Decree for stating a Case at Law.

9th March, 1744. Case stated.

21st April, 1746. Opinion of the Judges therein in Favour of Watts.

23d June, 1746. Final Order, decreeing him the Tythes of Fidown, and an Account of Maine Profits.

Death of Samuel Henry, and the Appellant presented by the Crown on 7th June, 1753.

Reasons for the Appellant's coming into Equity.



Ejection; and the frequent Vacancy of the See (Two Vacancies having already happened since the Appellant became the Incumbent) rendering it impracticable for the Appellant to proceed at Law to any Effect, and the Right, as well as Method of Proceeding, in this Case, having been so recently established upon the same Question, and with the same Defendants, and almost upon the same Property,

11th March, 1754. Bill filed by the Appellant in the Court of Chancery in Ireland, to be quieted in the Possession of the Rectorial Tythes of Killcolumb.

The Appellant therefore on the 14th of March 1754, exhibited his Bill in the Court of Chancery, in Ireland, against the Respondent *Cassandra Daniel*, the Widow and Devisee of the said *Richard Daniel*, and against *Simon Digby*, Esq; who had then married *Elizabeth*, one of the Daughters of *Richard Daniel*, and the said *Elizabeth* his Wife, and against *John M'Naughton*, Esq; who had then married *Mary* the other surviving Daughter, and the said *Mary* his Wife, and the Respondents *Sydnam Snow* and *Robert Snow*, the Lessees of the Tythes under the Respondent *Cassandra Daniel*, and against the Right Reverend *Edward*, then Lord Bishop of *Offory*, and against the Church-wardens, and some few of the principal Inhabitants of the Parish, setting forth the several Circumstances of his Case, agreeable to the preceding State thereof, with the Bishop's Refusal, and the other Reasons, disabling him to sue at Law to any Effect, and compelling him to come into a Court of Equity, and charging that the Tythes and other Dues of the Rectory from the Time his Title accrued, had been of the clear yearly Value of 200 *l.*—And also charging that the Defendants pretended he was barred by a Fine, levied of the Rectory; but he insisted that such pretended Bar, was prevented by the said several Suits in Equity; and that the Church in general, and the Appellant in particular, would not be precluded by any Act of *Richard Daniel*, during the Subsistence of the several Leases, or pending the said Suits; but that the said Suits, prosecuted by *Watts*, with Intent to bring to a solemn Determination the Title of the Bishop and Incumbents under the said Letters Patent, should have the same Effect, as to all the Rectories claimed by the Bishop and *Richard Daniel*, under the same Title, as it had to the said Rectory of *Fidown*; and that the Title of the Appellant and his Successors, the future Incumbents of the said Parish, in Right of the Church, should not be barred or prejudiced by any Default in their Trustees, the Bishops of *Offory* or the late Incumbents—And therefore praying, that the Appellant's Title might be established by the Decree of that Court, and he be quieted in the Enjoyment of the said Rectorial Tythes, with an Account of the Rents and Profits.

The Fine, as appears, was not levied by Daniel.

The Respondent *Cassandra Daniel*, and the then Defendants *Digby* and *M'Naughton*, and their Wives, by their joint Answer, insisted in general Terms, that King *Charles* the Second did not, by the Letters Patent mentioned in the Bill, grant the Rectorial Glebe and Tythes in Question to the Bishop of *Offory*, and his Successors, to the Uses mentioned in the Bill; or if he did, that the Patent was not good or effectual.

4th Dec. 1754. Defendant's Answer.

And they set up a Title as already stated under the Lease to *Sir Elis Leighton*, and the Trust by him declared in 1673, to Lord *Berkeley*—The subsequent Grant by King *Charles* the Second, in the 28th Year of his Reign, to *Edward Prodgers*; the Conveyance by *Prodgers* to Lord *Berkeley*, in August 1676, in Consideration of 600 *l.* and the Agreement with Lady *Berkeley*, by *Henry Daniel*, in October 1681, for the Purchase of her Right for 1000 *l.* and the subsequent Conveyance by Lord *Berkeley*, the Son, in May 1695, in Consideration of 400 *l.* more, and the Fine then levied, and the Will of *Richard Daniel*.

This Lease did not expire till 1725.

And that *Henry Daniel*, and *Richard Daniel* his eldest Son and Heir, continued in the peaceable Possession of the Premises in Question, by virtue of the said Deeds, till the Death of *Richard Daniel*, in April 1738, without paying any Rent for the same.

And they insisted, that, according to the respective Interests devised to them, they were entitled to the Tythes of the Parish of *Killcolumb*, under the Title before set forth, and insisted on the Fine levied to *Henry Daniel*, and the long and continued Possession and Enjoyment aforesaid, and on the several Statutes made in *Ireland*, for the Limitation of Suits, and particularly on the Statute of the Eighth of his late Majesty, entitled, "An Act for the more effectual quieting and securing Possessions, and preventing vexatious Suits at Law," being all the same Matters as were mentioned in *Watts's* Case.

4th June, 1755. Answers of the Defendants Sydnam and Robert Snow.

The Respondents *Sydnam* and *Robert Snow*, likewise answered the Bill, and *Robert Snow* said he became Tenant to the Rectories of *Killcolumb* and *Killbride* (inter alia) in 1736, at the yearly Rent of 90 *l.* by Lease, from the Defendant *Cassandra Daniel*, for her Life; and that he had accounted to her for his Rent, which he said was as much as any solvent Tenant would pay for the Premises.

Death of the Defendants Elizabeth Digby and Mary M'Naughton in 1755. The Cause revived by the Appellant in February, 1755.

The Defendant, *Elizabeth Digby*, one of the Daughters of *Richard Daniel*, having died after giving in her Answer, leaving the Respondent *John Digby* an Infant, her Son and Heir, and the Defendant *Mary M'Naughton*, the last surviving Daughter of *Richard Daniel*, having also died after answering, leaving the Respondent *Cassandra M'Naughton*, an Infant, her Heir at Law—The Appellant revived his Cause, upon both the said Abatements, and the Respondents, the Infants, severally answered by their Guardians, insisting on the same Defence as had been made by their Mothers.

Answer of the Bishop of Offory, who died soon after.

*Edward*, then Lord Bishop of *Offory*, also answered, and afterwards died, and was succeeded in the See of *Offory*, by *Richard*, now Lord Bishop of *Offory*, against whom the Appellant also revived.

Cause revived by the Appellant against his Successor. The succeeding Bishop's Answer 31 Nov. 1756.

And his Lordship by his Answer (agreeable to that made by his Predecessor) was pleased to say, that having been informed that his immediate and other Predecessors, Bishops of *Offory*, had declined to commence any Suit in their Names, for Recovery of the Tythes in Question, without the Opinion of the Court, and being a Stranger to the Title, and several Suits having formerly subsisted concerning the same—He did therefore decline to commence any Suit in his own Name for the Recovery thereof; at the same Time, if it should appear that any Trust was vested in him in Right of his See, he was willing to act therein as the Court should direct—But that he apprehended and was advised, that the Appellant might assert his Right in that Court, in his own Name.

Cause at Issue.

The Appellant replied to all the Answers (except the Bishop's); and the Cause being at Issue, examined several living Witnesses, and also obtained the usual Orders for reading the Proceedings in the former Cause by *Watts*, and for reading the several Grants and other Exhibits; and the Respondents also obtained the like Orders for reading Exhibits, but did not examine any Witnesses in chief.

9th Dec. 1758. Hearing. Decretal Order. 25th Jan. 1759.

The Cause came on to be heard before the Lord Chancellor of *Ireland*, and was again heard before him, on the 25th of January following; on which last Day, his Lordship was pleased to direct, that the Appellant's Bill should be retained for a Year and a Day, and that the Appellant should be at Liberty to ascertain his Title at Law (if he should think proper), and to make Use of the Name of the Bishop of *Offory*, as Plaintiff in any Action to be brought.

Appeal to the Lords.

From this Decretal Order, the Appellant has appealed to your Lordships, insisting, that the Court of Chancery in *Ireland* ought to have established his Title, and to have quieted him in the Enjoyment of the Tythes in Question, by perpetual Injunction, and to have granted him the full Relief prayed by his Bill; or otherwise to have directed an Issue, or to have sent a Cause to a Court of Law in that Kingdom (as in the former Suit instituted by *Watts*), in order to have determined the Appellant's legal Title to the Tythes in Question; for the following, among other,

R E A S O N S :

- I. In all Cases, as well where the Interest of the Crown as that of a Subject is concerned, the First Grant, not otherwise impeached, is to take Place—The Intention of the Crown to grant these Rectories to the Church can no more be denied, than the Priority of the Grant—There was no Deceit upon the Crown; the King had a Right and intended to grant his whole Reverfionary Interest; and the Omission of Notice of the Reverfionary Lease to *Leighton*, by which the Operation of the Grant was so much longer suspended, was no Prejudice to the Crown, though it was so to the Church; and had there been any Informalities or Misrecitals in the Grant, they were cured by the several *Non-obstante* Clauses.
- II. The subsequent Grantee, who founds himself solely upon the supposed Invalidity of the Prior Patent, has neither the Merit of a Purchaser without Notice, for the Prior Grant was enrolled; nor yet of a Purchaser for a valuable Consideration, the Consideration (if any) moving from *Prodgers* to the Crown, is very uncertain; but the Consideration paid him by Lord *Berkeley*, plainly appears to be no more than 600 *l.* and Lord *Berkeley's* Interest was again sold after his Death for 1400 *l.* (including the whole Benefit of the 51 Years Lease to *Leighton*) and the Payment of the 1000 *l.* Part of that Purchase Money to Lord *Berkeley's* Widow and Executrix, and only the remaining 400 *l.* to his Heir, as plainly indicate that the Lease, rather than the Reversion, was the immediate Object of the Purchase; nor have the Respondents the Merit of long and quiet Possession, the Fine in 1695, being 30 Years before the Title of the Bishop accrued in Possession, and levied merely to bar the Dower of the young Lady *Berkeley*, and the Right, though not the Possession, has been in Litigation from 1726.
- III. The Appellant had originally a Right to the Aid of a Court of Equity, to compel an Execution of the Trust from the Bishop of *Offory*, and the Relief is consequential—Had the Cause required it, an Issue might have been directed on the very Right, or a Cause stated for the Judgment of a Court of Law, as a Means of assisting the Conscience of a Court of Equity, in making its Decree, without leaving the Appellant generally to Law; but the Court of Law having already determined the legal Questions upon the very Cause stated against the same Defendant, and that in a solemn Manner (though not in the same Cause, nor upon the same Individual Tythes), and those Proceedings having been read in the Cause, without Objection to the reading them, or to the Opinion of the Judges, the present Decree does either a hard, or a vain Thing; an hard one, if the Nature of the Action to be brought lays the Appellant under Difficulties in Point of Form, in bringing the Merits of the Cause to an Issue at Law; and a vain one, if nothing but the same Question is to be determined again.
- IV. There is no Matter of Fact in this Cause, necessary to be ascertained by a Jury, the Whole depending on the Point of Law sent to the Common Pleas in *Watts's* Case, arising not upon doubtful Facts, but upon the Construction and Operation of Grants on Record, admitted alike by both Parties.
- V. The Appellant seeks a speedy and final Determination upon the true Question of Right—If the Respondents prevail, a Scene of Litigation will be opened, alike fruitless and without End, unless (which must be the Event in that Case) the Appellant should abandon the unequal Contest, whereby the Benefit intended by the Crown to the Church will be eluded, and the Grant to *Prodgers* in Deceit of the Crown be established.

C. PRATT.  
C. YORKE.



House of Lords.

Ralph Hawtry, Clerk, - Appellant.

Cassandra Daniel, Widow, } Respondents.  
and others, - - -

## The Appellant's CASE.

To be Heard at the Bar of the House of Lords, on  
Wednesday the 30th Day of April, 1760.

C. PRATT.  
C. YORKE.